

P.E.R.C. NO. 2007-49

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY JUDICIARY,

Petitioner,

-and-

Docket No. SN-2007-034

PROBATION ASSOCIATION OF
NEW JERSEY (CASE-RELATED
PROFESSIONAL UNIT),

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants, in part, the request of the State of New Jersey Judiciary for a restraint of binding arbitration of a grievance filed by the Probation Association of New Jersey (Case-Related Professional Unit). The Commission restrains arbitration to the extent the grievance claims that Bilingual Probation Officers are entitled to the title and pay of Master Probation Officer and that the assignments of bilingual probation officers should be changed. The Commission denies a restraint of arbitration over the claim that probation officers performing bilingual duties are required to do more work than regular probation officers and should be given a stipend for that extra work.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Petitioner, Melissa P. Marschner, Staff
Attorney, Office of Counsel to the Administrative
Director, on the brief

For the Respondent, Fox and Fox, LLP, attorneys
(Benjamin Benson, on the brief)

DECISION

On December 18, 2006, the State of New Jersey Judiciary petitioned for a scope of negotiations determination. The Judiciary seeks a restraint of binding arbitration of a grievance filed by the Probation Association of New Jersey (Case-Related Professional Unit). PANJ asserts that Bilingual Probation Officers should be given the title of Master Probation Officer and the pay for that title. We restrain arbitration of that promotion-based claim. PANJ also asserts that assignments of probation officers performing bilingual duties should be appropriately balanced and that these officers should be given a

stipend for extra work. We restrain arbitration of the assignment claim, but not the stipend claim.

The parties have filed briefs and exhibits. The Judiciary has filed the certification of Christine Danilo, Chief of the Placement and Classification Unit, Human Resources Division. PANJ has filed the certification of Peter Tortoreto, its first vice-president. These facts appear.

PANJ represents probation officers as well as certain other employees. The parties' collective negotiations agreement is effective from July 1, 2004 through June 30, 2008. The grievance procedure ends in binding arbitration of alleged contractual violations, but the definition of grievance excludes disputes concerning the establishment and implementation of the title of Master Probation Officer and the work assignment article specifies that disputes under it are not arbitrable.

The contract contains articles entitled Respect and Dignity (2.1) and Non-Discrimination (2.2). An article entitled Position Classification (26) provides that any career service employees who believe they are working out-of-title may request reclassifications using the appropriate forms in accordance with N.J.A.C. 4A:3-3.5. A side letter provides, in part, that "[t]he Judiciary recognizes that employees who perform bi-lingual duties perform a special service in their work for the Judiciary and the

community, and that this work and other work will be appropriately balanced.”

The Probation Officer band has four levels of titles: Level 1 - Trainee/Investigator; Level 2 - Basic (Probation Officer); Level 3 Journey (Senior Probation Officer); and Level 4 - Mastery Level (Master Probation Officer). The duties of a Master Probation Officer include:

Perform case management functions, conduct high impact pre-sentence and pre-trial investigations and prepare responses; supervise, monitor and enforce conditions of probation and/or court order of a high risk, chronic or acute client population. Provide technical advice and expertise on policy, procedures, special programs, and case management processes. May act as mentor or lead worker.

Each of the four titles has a bilingual variant. The variant states:

The above examples of work are to be performed utilizing Spanish or English, as required, depending on the needs of the individual persons communicated with during the course of official duties. Such examples do not require an individual to interpret or translate any court proceeding or in any other context.

According to Danilo, each probation officer in a variant title performs the same work as other officers on the same level, but does so in Spanish when necessary. According to Tortoreto, bilingual probation officers are assigned a specialized, complex

caseload without any training or extra compensation and are assigned duties beyond their regular caseload.

On November 17, 2004, PANJ filed a class action grievance alleging a violation of articles 2.1 and 2.2, the side letter, and fundamental fairness. The Statement of the Grievance provides, in part:

The Judiciary recognizes that employees who perform bilingual duties perform a special service in their work for the Judiciary and the Community, and that this work and other work will be appropriately balanced. Other violations of non-contractual provisions include fundamental fairness.

In many instances bilingual officers are assigned tasks in addition to their regular assignments. This disbursement of assigned work done without regard to the appropriate balance of duties violates contractual provisions of respect and dignity, non-discrimination and the side letter of agreement. Additionally, these officers are assigned specialized cases on the basis of language. These specialized cases include but [are] not limited to sex offenders, the mentally ill, domestic violence cases, collections, and intake functions. These officers perform these duties of more intensive cases with little to no training and resources available to the clients. Yet no monetary compensation is offered to these valued employees.

As a remedy, the grievance requests that the Judiciary balance assignments and recognize that many duties are performed at a Master Level. It adds that "[m]onetary compensation for the Bilingual Probation Officer should be administered" and employees

performing duties at the master level "should be compensated with the Master Probation title and salary."

A Judiciary-appointed hearing officer conducted a departmental hearing. His report found no disproportionate assignment of duties, no contract violation, and no entitlement of bilingual probation officers to the title and pay of Master Probation Officer. He concluded that under Article 26 and Civil Service regulations, reclassifications must be sought through the Department of Personnel. It does not appear that any such reclassification has been sought.

On October 19, 2006, PANJ demanded arbitration. Its demand described the hearing officer's decision as having held that PANJ had not proved a disproportionate distribution of assignments between bilingual and non-bilingual probation officers or an entitlement to have any officers promoted to the title and pay of Master Probation Officer. This petition ensued.

We consider the negotiability of this dispute in the abstract and express no opinion about the merits of the grievance or any contractual defenses the Judiciary may have. Ridgefield Park Bd. of Ed. v. Ridgefield Park Ed. Ass'n, 78 N.J. 144, 154 (1978). We specifically do not consider whether, as PANJ contends, the hearing officer misdescribed its witnesses' testimony. Nor do we consider whether, as the Judiciary contends, the grievance definition bars PANJ from arbitrating

this dispute or the grievance time lines bar PANJ from raising workload issues or a stipend claim not specified in the grievance. In addition, we note that the Judiciary's contention that the workload/compensation claim is too minor to be considered is a question outside our limited scope of negotiations jurisdiction. See Cinnaminson Tp. Bd. of Ed., P.E.R.C. No. 99-10, 24 NJPER 419 (¶29194 1998).

The parties dispute whether this negotiability dispute encompasses a claim that bilingual probation officers should be given the title and salary of Master Probation Officer. The grievance states that it is seeking to have probation officers performing bilingual duties compensated with the title and salary of Master Probation Officer. The demand for arbitration similarly contests the hearing officer's determination that these officers were not entitled to promotion to Master Probation Officer and the accompanying salary. While PANJ's brief and Tortoreto's certification now disclaim any intention to use the arbitration process as a method to secure promotions, both documents also seek a ruling that "the Judiciary recognize that many of these Probation Officers who either hold the bilingual title, or who perform bilingual duties, perform work at the Master Probation Officer level." Such a ruling would inevitably serve as a predicate for the same type of promotion/pay claim

asserted in the grievance and demand for arbitration. Under these circumstances, we will decide the negotiability of the issue asserted in the grievance and demand and not effectively withdrawn by PANJ's later papers. We restrain arbitration of that promotion-based claim because management has a prerogative to determine when promotions will be made and whom it will promote. State v. State Supervisory Employees Ass'n, 78 N.J. 54, 90 (1978). PANJ must pursue any reclassification appeal with the Department of Personnel.

The grievance also asserts that probation officers performing bilingual duties are required to handle specialized cases in addition to their regular assignments and that this allegedly unbalanced distribution of assignments violates the side letter and warrants extra compensation. PANJ's brief and Tortoreto's certification assert that the Judiciary should be compelled to honor the side letter and thus to balance appropriately the bilingual duties and other duties of probation officers and to "provide the Probation Officers with a reasonable stipend in order to adequately compensate them for the extra bilingual work that they do which benefits the Judiciary and the community."

We restrain arbitration of the assignment issue. Management generally has a prerogative to determine which employees will perform what assignments, Ridgefield Park at 156, and this record

does not warrant an exception permitting an arbitrator to determine that assignments should be distributed in a different fashion. We do not believe, as PANJ asserts, that this case predominantly involves a workload rather than assignment issue; it does not appear that employees have had their work day or work hours increased or that they have been required to perform duties not typically performed by probation officers.

But we decline to restrain arbitration of the stipend claim. Compensation issues are generally negotiable, and this record does not warrant an exception permitting the Judiciary to determine compensation unilaterally. Hunterdon Cty. Freeholder Bd. and CWA, 116 N.J. 322 (1989). The Judiciary has not asserted that any statute or regulation specifically preempts an agreement to pay a stipend for probation officers performing bilingual duties. PANJ's stipend claim is therefore legally arbitrable. See, e.g., City of Jersey City, P.E.R.C. No. 2007-26, 32 NJPER 356 (¶149 2006) (union may pursue claim for additional compensation for sergeants assigned as Tour Commander/Desk Officers). We repeat that we lack jurisdiction to consider whether an agreement concerning a stipend has been negotiated or to consider the contractual arbitrability of the claim.

ORDER

The request of the State of New Jersey Judiciary for a restraint of binding arbitration is granted to the extent the

grievance claims that Bilingual Probation Officers are entitled to the title and pay of Master Probation Officer and that the assignments of Bilingual Probation Officers should be changed. The request is otherwise denied.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Buchanan, DiNardo, Fuller and Watkins voted in favor of this decision. None opposed.

ISSUED: February 22, 2007

Trenton, New Jersey